

REMARKS

Prior to the present Amendment, claims 5-8 and 10-27 were pending. By way of the present response, claim 17 is amended. Accordingly, claims 5-8 and 10-27 remain pending, with claims 5-8 and 10-16 withdrawn from consideration by the Examiner as being drawn to a non-elected invention. In view of the above amendment, and the remarks advanced below, reconsideration and withdrawal of the rejection of the claims is respectfully requested.

Starting on page 2 of the Office Action, claims 17-27 are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Ramey (U.S. Patent No. 5,297,685) in view of Begum et al. (U.S. Patent No. 6,012,244, hereinafter "Begum") and Porter et al. ("The influence of brand recognition on retail store image," The Journal of Product and Brand Management, Santa Barbara, 1997, vol. 6, No. 6, page 373, hereinafter "Porter"). This rejection is respectfully traversed, as there no teaching within the applied Ramey, Begum and Porter documents, whether considered individually or in any combination, and/or taken in consideration with knowledge and/or common sense of those of ordinary skill in the art, that would have suggested the modifications to Ramey that would have been necessary to arrive at the claimed subject matter.

Before proceeding with a detailed analysis of the rejection, the undersigned thanks the Examiner for the courtesies she extended to inventor Paul Enfield, myself and his representative Robert Hughes, throughout the personal interview conducted on August 16, 2007. During the interview, Mr. Enfield discussed the background and disclosure of the invention. Additionally, the undersigned discussed the distinctions between the claimed subject matter and the applied Ramey and Begum documents that were presented previously in Applicant's response dated September 15, 2006. Also, it was pointed out why the newly applied Porter document (discussed below) would not have been considered relevant to the specific combination of claimed features set forth in the independent claim.

During the interview, the Examiner expressed a concern that the features of the independent claims relating to a plurality of display signs including "a plurality of brand name product representations of products which are representative of other usage related products in its related secondary location related product category or categories or subcategory or subcategories in its related aisle, with the brand name product representations that are on the display sign being representative of a greater number of other products in the

aisle associated with that display sign,” may correspond to a wall displaying a brand name or a band name on a sign placed over product section of aisle (e.g., a “Starbucks™” sign over a section including different coffee products produced by Starbucks™). In response, independent claim 17 has been changed to make it abundantly clear that a customer observing one of the plurality of display signs would be aware of a plurality of different brand name representations provided on the display sign in at least one group in proximity or overlapping relationship to one another, with these brand name representations being representative of a greater number of other products that are in the aisle associated with the display sign so as to be present along a substantial length of the aisle. Support for these amended features is found, for example, in Applicant’s FIGS. 3 to 5.

Ramey

Returning now to the rejection, it is to be initially noted that the Ramey patent, which was discuss at length in Applicant’s September 15, 2007 response, does not include any signs displaying brand name representations as set forth in claim 17. In the Office Action, at page 3, the Examiner speculates that the “Ranch Casing” shown in FIG. 3 of Ramey “could have its own trade dress recognition” (emphasis added). However, “ranch casing “ is not a brand name representation, as claimed. Rather, it is a generic molding style such as “colonial casing” or “crown molding” that may be produced by several different manufacturers. Ramey simply does not describe, imply or suggest brands, much less providing brand name representations on display signs.

In the system of Ramey, a customer identifies a particular molding on the directory and proceeds to a color-coded sign having the same color as the group including the identified molding. On the support member in the general area of the color-coded sign are display panels (i.e., one of items 52-60 as shown in Figures 1 and 2), each of which include a heading (e.g., “window and door”) and cards that show each particular molding in the sequence they are stored in that section of the support member. The basic problem addressed by Ramey’s system is that management in those types of large stores is cutting down the number of personnel who can be on the sales floor advising customers where to find items. Therefore, in a situation where a person is looking for a specific item, there should be an indexing type system where this person can find that specific item rather easily without

having to consult the sales personnel on the floor.

More specifically, Ramey proposes a specific situation involving a large number of elongate moldings. A molding is usually a long wood, plastic or composite strip that is placed, for example, along the seam in a building, such as where the floor meets the wall, around window casings or possibly a vertical juncture seam at a corner. Looking at Fig. 4 of Ramey, it appears that there are probably as many as twenty or more such moldings having different cross-sectional configurations and different designations. The system of Ramey will efficiently guide the person to the precise location of a particular product. Fig. 4 also shows that every single piece of molding in that aisle and is identified in two ways: showing the cross-section and also the molding designation. For example, in Figs. 2 and 3 there is shown at a larger scale the designation of a molding that is known as "Ranch Casing," and showing its particular cross-section. Thus, if the person knows only its cross-section or the name, the person can identify the molding he or she wants.

However, because the system of Ramey lists all the elements in an aisle, Ramey does not describe or suggest the "few-to-many" association between the directory and products in the aisle, much less the claimed features relating to different brand name product representations on the display sign that are representative of a greater number of other products in the aisle associated with the display sign, and which are not on the display sign and are generally associated by location with the brand name product representations on the display sign. This significant difference between Ramey and the claimed invention is abundantly evident when considering that a modification of the Ramey system to indicate only a fraction of the items stored in the aisle would result in a system that would radically change the principle of operation of Ramey and/or render it unsatisfactory for its intended purpose (see, MPEP Sections 2143.01 (V) and (VI)). Accordingly, Ramey also does not describe, and in fact, *teaches away* from different brand name product representations on the display sign being representative of a greater number of other products in the aisle associated with the display sign, and that the number of brand name product representations in the display sign are a relatively small fraction of the number of usage related products in the aisle that is associated with that display sign, as claimed.

In contrast to Ramey, the claimed invention addresses a problem relating to stores such as supermarkets, which sell a large amount of different products (e.g., hundreds, maybe

even approaching a thousand or more). In such stores, a person simply has to go through the frustrating tour to find the right aisle and then make his/her tour down the aisle where he might find the product or products he or she is looking for.

It is widely accepted that the majority of people do not like to shop for groceries. Accordingly, what makes people go to one store in preference to another is of great interest. A first criterion is location (i.e., is it nearby). A second criterion is that a person wants to be able find his or her way through the store without having to find a sales clerk and ask what aisle a product is located, and where it might be in that aisle. Once a person becomes more familiar with the layout of the store, that person is more likely to come back to that same store, simply because it reduces some of the frustrations of grocery shopping.

One aspect of the present invention is to better enable the person to learn and remember the layout of the store. The claimed subject matter takes advantage of the fact that traditionally in these supermarkets certain products or types of products are often near each other or at least in the same aisle, and that a similar pattern exists in grocery stores around the country. In some instances, for example, items are grouped in one aisle because the store wants to take advantage of "impulse shopping." To give an example of this, a person may proceed down the aisle where one product is coffee. Also in that aisle are other things associated with coffee that the person also might see, which will remind the person of thinking, for example, "yes, we are all out of coffee creamer," and so the store makes another sale.

Another aspect of the present invention takes advantage of the fact that after a consumer is exposed over the months or years, he or she becomes familiar with various brand names and their images, such as "V8 Juice", "Heinz Catsup", etc. The fact that the person already has familiarity with these products as well as the overall format of the label, makes the person more likely to more easily remember it. The present invention takes advantage of this by selecting some of these brand name representations that are in each of a substantial number of the aisles of the store and that are representative of the location related products in that aisle. Then, images of the brand name representations of products are grouped together on a display sign associated with an aisle to indicate that not only are products relating to the brand name located in the aisle, but also that the related products are also located in that aisle.

The test lasting for six months that the inventor initiated indicated that people will

remember the sign with the pictorial representations of the brand names much more easily than if they are simply identified by their word classifications, such as, "Mayonnaise", etc.. Therefore, when a person is looking for catsup or similar items, that image will come to the persons mind and also its location. It has been found statistically that the people find that they can more quickly become familiar with the store layout so that after shopping at that store for maybe a half a dozen or a dozen times, many of these signs are etched in their memory better so that they can make their way around the store more easily.

Thus, in stark contrast to Ramey, the claimed display sign does not try to tell a person exactly what is in the aisle associated with the sign. Rather, it simply shows the person the types of products which are in that aisle, and then the person doing the shopping, and relying upon his past experience over the years in grocery store shopping, would assume that there are going to be other location related items in that same aisle. To modify Ramey in such a way would not only run counter to Ramey's indexing concept, but would appear to destroy the principle operation of this reference.

Porter

Moving on to the newly applied Porter document, the title of this document (i.e., "*The Influence Of Brand Recognition On Retail Store Image*") exactly characterizes this article. The article is not about how to help a person find his way through the store and know where the products are. In fact, it does not discuss or suggest anything whatsoever about display signs. Rather it discusses how the store itself should select its brand names and conduct its advertising to ensure "a favorable store image." More particularly, the abstract of this Porter Publication, which appears on the first page, reads as follows:

This article investigates the relationship between brand characteristics - awareness level and image - and their influence on consumers' perceptions of retail image. The article proposes a model of relationships between the number of recognizable brands carried by a retail establishment, the presence/absence of an anchor brand, and perceptions of retail image. The article presents the analysis and results of a study designed to test the model. In addition, the article develops and tests a measure of retail store image. It is indicated that one tactic for ensuring a favorable retail store image is a merchandise mix composed of a relatively high number of brands possessing high brand awareness, and one or more brands with a strong brand image. The article offers recommendations for both brand and retail managers.

As can be seen from the above, this article simply has nothing to do with the aim of the

present invention of helping people find their way through a store and having better “memory hooks” as to where products are in the aisles of the stores. While the article does talk a lot about brand name products, it does not deal with how brand name products could be displayed in aisles of the store to give the shopper information about what is in those aisles. Therefore, if someone were looking for ways to make it easier for the person to get around the store, and if he happened to look at this title of the article, he would probably pass over it very lightly, or not look at it at all.

With respect to the treatment of Porter in the Office Action, starting at the last paragraph at page 4 the Examiner first cites passages from Porter relating to “associations,” “style cluster” and “products cluster.” However, Porter discusses these items in the context of how a consumer’s mind associates brand image. In the second citation relied upon regarding one of the brands possessing “strong brand recognition,” Porter is describing how a store carrying more than one “anchor brand” enhances a customer’s perception of that store’s image. As pointed out above, however, none of these citations have anything to do with the features missing in Ramey related to providing a plurality of brand name representations on a display sign associated with a store aisle to give a shopper information about what is in that aisle.

Porter is simply too general and does not mention anything whatsoever regarding signage, much less use of brand name representations on signage associated with a store aisle. Accordingly, there is nothing in Porter et al. that would have taught or suggested modifications of Ramey that would be needed to arrive at the independent claims.

Begum

With the Ramey and Porter documents having been discussed above, Begum, et al. will now be discussed to see how one of ordinary skill in this art would view Begum in view of Ramey and/or Porter. Looking at the introductory portions of Begum, one can arrive at an idea of what the invention is about. It reads as follows:

This invention relates to the field of retail marketing and in particular to an electronic, product promotional device. The product promotional device of this invention is a shelf-mounted display sign with a mechanical shelf clip connected to a vertical battery canister that has a bracket with a flexible flap that provides a sign board for an advertisement or product promotion. The canister includes one or more lights to

attract the shopper's attention and preferably includes circuitry for a preferred embodiment as a trigger unit for a shopping cart display.

Begum also shows a single sign advertising a particular juice product, with the light going on and off. The inventive part of this patent is the particular way they mounted this on a shelf, various hardware, electrical connections, etc.

Although the Begum patent shows a company name in Figure 1, which may or may not be a "brand" (i.e., "ACME"), the Examiner correctly acknowledges that Begum fails to teach or suggest selecting ACME orange juice as the sign display for the given product group based in its brand name recognition (see, page 4 of the Office Action, last paragraph). However, at page 5 of the Action, the Examiner makes an unsubstantiated leap in logic in the following statement:

Whether one or a plurality of such brand names is displayed is deemed a mere repetition of the same concept and thus the combination based the PORTER will cause each of said display signs having a plurality of brand name product representations of products which are representative of other usage related products in its related secondary location related product category or categories or subcategories in its related aisle ... (see, page 5).

To the contrary, there is simply no teaching or suggestion whatsoever in the Porter document, which is completely silent with regard to signs, to place a plurality of different brand name product representations of products on each of a plurality of display signs, as recited in independent claims 16 and 17. Rather, Porter would appear to perhaps suggest that a retail store such as the supermarket described in Begum et al. should carrying an anchor brand and a plurality of other highly recognizable brand name products to ensure favorable retail image.

Furthermore, while there is nothing explicitly described in Begum concerning a product's location and a product described in the sign, a person of ordinary skill in the art would have understood that Begum might perhaps teach providing a sign positioned at or very close to the actual location of a product (i.e., only on the pricing rail). In other words, that the sign of Begum, which is an assembly of relatively small size and including a sign displaying a single product infers a location of the product that is proximal to the location of the sign.

However, even if one were to assume *arguendo* that Begum's sign infers a location of the depicted product, it would appear counter-intuitive and against common sense to include

a plurality of different brand representations on such a sign, to infer the locations of products associated with the plurality the brand representations. That is, why would one of ordinary skill in the art be led to provide more than one brand representation on a single rail sign to infer respective locations of products associated with the brand name representation with using small sign at a specific location along the display's price rail? The answer is that they would not. According to Begum et al., the sign is of relatively small size to avoid contact with shoppers perusing an aisle (see Begum et al., the paragraph spanning columns 1 to 2). It would appear unreasonable to assume that one of ordinary skill in the art would consider including a plurality of different brand name representations of products on such a small display sign attached to a display price rail. Instead, it would appear one of ordinary skill in the art practicing common sense would deploy a plurality of such rail signs - one for each product - and that each such sign would correspond to one product at a location proximal to that product.

Thus, the Examiner's suggested modification of Ramey to include the claimed features of plurality of brand name representations of products on each of a plurality of signs, is neither taught nor suggested in the in either of Begum or Porter, or in any combination of these documents with Ramey, and would not have been reasonably considered to be within the common sense of one ordinary skill in the art. Accordingly, the rejection is fraught with hindsight reasoning that impermissibly imports only what Applicant has disclosed to bridge the gap of claimed features missing from the applied documents.

Finally, clarification is respectfully requested with regard to the paragraph spanning pages 7 to 8 of the Office Action, which states, "The Declarations under 37 CFR 1.132 filed 9/15/06 is insufficient to overcome the rejection of the claims 17-27 based upon as set forth above as set forth in the last Office Action because; they support and do not diminish the disclosure of the prior art reference to PORTER."

For all the foregoing reasons, the rejection under Section 103(a) of independent claim 17, and hence also dependent claims 18-27, should be withdrawn. Such withdrawal and prompt indication of allowability of respectfully requested.

Respectfully submitted,

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